

Summary

Amendments to 453 C.M.R. §6.00

General

The Title and the CMR number of the Regulation is changed from 453: DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT to 455: DIVISION OF OCCUPATIONAL SAFETY.

Section 6.01: Authority, Purpose and Scope

- 6.01(7) The EPA's Worker Protection Rule, 40 C.F.R. Part 763, Subpart G, which applies the protections of the OSHA asbestos standard to public sector employees, is incorporated by reference.

Section 6.02: Definitions

1. The definition of "*Asbestos-Containing Material*" is amended to refer to a layer-by-layer composition, rather than a composition of materials consisting of distinct, but not readily separated, layers. Presence of asbestos in excess of the 1% threshold in any layer in such materials would mean that the entire material would be regarded as an "*Asbestos-Containing Material*." This proposed change is consistent with EPA NESHAP definitions.
2. Definitions for "*Contract Staffing Agency*", "*Leased Asbestos Worker*" and "*Temporary Asbestos Worker*" have been added to the regulation.
3. A new definition, "*Operations and Maintenance Project*," is included. Under this definition, Operation and Maintenance Projects would include small-scale maintenance and repair work involving specified amounts of friable asbestos material (generally less than 3 square/linear feet of asbestos material, or an amount that can be contained by a single 5' glove bag) and work operations involving non-friable asbestos materials that are conducted in accordance with specified methodologies. The term replaces the current "*Asbestos-Associated Project*," in recognition of the fact that asbestos-associated projects, i.e., those that incidentally involve asbestos, may be either large or small projects. The new definition supports other proposed amendments in the regulation which would allow much of this work to be carried out by persons other than licensed asbestos

Summary, Draft Amendments to 453 C.M.R. §6.00

contractors.

4. For consistency, a new definition “*Operations and Maintenance Worker*” is included in the regulation. This category of worker is essentially the same as the “*Asbestos-Associated Project Worker*” in the existing regulation.

5. The definition of “*Work Area*” is expanded to include areas of egress to the area where asbestos is being removed and areas used for the storage of equipment or removed materials.

Section 6.03: General Requirements

6.03(2) The activities requiring licensure as an Asbestos Contractor are amended to include entering into contracts for asbestos abatement work.

6.03(7) The “*Requirement for Asbestos Training*” provision is amended to include a requirement that persons carrying out asbestos work possess a current certificate of training in addition to a current license issued by the Division.

6.03(9) In addition to requiring notification of Asbestos Response Actions, these amendments would require such notification for Operations and Maintenance Activities involving the removal of 260 linear feet or 160 or more square feet of non-friable asbestos-containing material or 35 or more cubic feet of non-friable asbestos-containing material, whichever is less, except that projects involving the removal of asphaltic roofing materials which are conducted in accordance with the work practices set forth at 455 C.M.R. §6.13 would be exempt from notification requirements.

6.03(13) These amendments would prohibit persons with supervisory or management authority from assigning employees and other workers under their control tasks that they (the workers) would not be authorized to perform under 455 C.M.R. §6.00.

6.03(15) This subsection adds a requirement that asbestos materials that would be made friable during the course of Asbestos-Associated Work be abated prior to the commencement of any such work.

Section 6.04: Administrative License Actions

6.04(3) The amended standards would expressly provide for: the issuance of conditional licenses by DOS; DOS’ entering into consent agreements with the license holder; and the placement of the license holder on probation for sufficient cause. This amendment does not extend DOS’ authority, but simply clarifies in the regulation

Summary, Draft Amendments to 453 C.M.R. §6.00

what actions may be taken against a license holder.

- 6.04(4) This amendment would clarify the standard for summary suspension and include a new requirement of a hearing on a summary suspension within seven days of the notice. The proposed provision would further allow non-summary actions, including revocations, suspensions or refusals to renew, to be conducted concomitantly with summary actions.

Section 6.05: Licensure of Asbestos Contractors

6.05(1)7. and 8.

Amendments to these subsections would require those Asbestos Contractors applying for licenses who use temporary workers to identify the Contract Staffing Agencies from whom they obtain or have obtained Temporary or Leased Workers and to document the Workers' Compensation Insurance coverage of those firms by supplying a copy of the applicable certificates of insurance as part of the application package. Said certificates of insurance would need to indicate that the Contract Staffing Agency has coverage under Workers Compensation Classification Codes 5472 or 5473 - the codes specific to asbestos work.

- 6.05(1)(b) These amendments would allow Asbestos Contractors who have previously been licensed to present only those training certificates received since the effective date of the most recently-issued license; also allow copies of training certificates to be submitted, except that the training certificate for the most recently received training would be required to be an original.

Section 6.06: Licensure of Asbestos Workers and Supervisors

- 6.06(1)(b) This amendment would require applicants for licensure as Asbestos Workers to present proof of age and identification. A list of acceptable forms of identification will be made available on DOS's website and at each branch office.

- 6.06(1)(c) These amendments would allow Asbestos Workers who have been previously licensed to present only certificates of training for training received since the effective date of the most recently-issued certificate; also allow copies of training certificates to be submitted, except that the training certificate for the most recently-received training would be required to be an original.

- 6.06(3)(b) This amendment would require applicants for licensure as Asbestos Supervisors to present proof of age and identification. A list of acceptable forms of identification will be made available on DOS's website and at each branch office.

Summary, Draft Amendments to 453 C.M.R. §6.00

- 6.06(3)(c) These amendments would allow Asbestos Supervisors who have been previously licensed to present only certificates of training for training received since the effective date of the most recently-issued certificate; also allow copies of training certificates to be submitted, except that the training certificate for the most recently-received training would be required to be an original.
- 6.06(3)(d) This amendment would require applicants for licensure as Asbestos Supervisors to present evidence of having previously been licensed as an Asbestos Worker or Asbestos Supervisor for six months as a prerequisite to licensure.

Section 6.07: Licensure of Asbestos Consultants

- 6.07(1)(b)4.b. This amendment specifies that the “apprenticeship” requirement for persons applying for licensure as Asbestos Project Monitors under this option would include the performance of project monitoring work under the direct supervision of a licensed Asbestos Project Monitor on no fewer than 15 asbestos projects during the period of apprenticeship..
- 6.07(1)(c)2. This amendment would require applicants for licensure as Asbestos Consultants to present proof of age and identification. A list of acceptable forms of identification will be made available on DOS’s website and at each branch office.
- 6.07(1)(c)3. These amendments would allow Asbestos Consultants who have been previously licensed to present only certificates of training for training received since the effective date of the most recently-issued certificate; also it would permit the submission of copies of prior training certificates, rather than the originals, with the exception of the most recently received training certificate which would be required to be an original.
- 6.07(2)(b) This amendment would require Asbestos Consultants to fill out the appropriate entries in the contractor’s sign in/out log at asbestos abatement projects.

Section 6.08: Licensure and Other Requirements for Asbestos Analytical Services

- 6.08(2)(a)5. This amendment would require applicants for licensure as Asbestos Analytical Services to supply DOS with proof of Workers’ Compensation Insurance coverage.

- 6.08(4)(e)4. (in currently effective regulations)

The requirement that analysts who perform field analyses of air samples using phase contrast microscopy be listed in the Asbestos Analysts Registry (AAR) would be eliminated by these amendments.

Section 6.09: Licensure and Other Requirements for Training Providers

- 6.09(1)(a)5. This amendment would require applicants for licensure as Asbestos Training Providers to supply DOS with proof of Workers' Compensation Insurance coverage.
- 6.09(3)(c) This amendment would require a Training Provider to notify the Commissioner prior to the cancellation of any training course.
- 6.09(3)(d) This amendment would require that Training Providers verify the identity of applicants for training by requiring them to produce a form of government-issued, pictured identification in advance of receiving training.
- 6.09(3)(e) This amendment would require Training Providers to verify that the previously-issued training certificate of applicants for refresher training is either current or expired for no more than one year.
- 6.09(3)(f) This amendment would require Training Providers to ensure that persons receiving training sign in and out of training courses by filling in appropriate entries in a sign in/out log.
- 6.09(3)(g) This amendment would require Training Providers to ensure that each person who takes a post-course examination signs the answer sheet.
- 6.09(3)(h) This amendment would require Training Providers to issue two original training certificates to persons who successfully complete asbestos training courses.
- 6.09(3)(k) This amendment would require that Training Providers render training in the language in which each trainee is fluent, except that the written course materials, oral instruction and written examinations for Asbestos Supervisors and all Asbestos Consultant disciplines shall be in English.
- 6.09(3)(l) This amendment would require Training Providers to provide the Commissioner with the name, address and Social Security Number of each person who successfully completes an asbestos training course within five days after the completion of said course. Such notification, currently, is required to be provided within 30 days.

Section 6.10: Training Requirements

- 6.10(2)(b) This amendment would require persons participating in Operations and Maintenance Projects to have received a specified initial two-day training course

Summary, Draft Amendments to 453 C.M.R. §6.00

and, where more than five years have elapsed since the date of the previous training, a refresher training course.

- 6.10(2)(c) This amendment would allow the grace period of one year following the expiration of a training certificate (during which time a trainee may take a refresher training course in lieu of re-taking an initial training course) to be extended only once in the five-year period commencing on the expiration date of a training certificate.
- 6.10(4)(h) This amendment would require persons participating in Operations and Maintenance Projects to have received a specified initial two-day training course and, where more than five years have elapsed since the date of the previous training, a refresher training course of one-half day in length. Persons performing Operations and Maintenance Work involving only the removal of asphaltic shingles and felts would be exempted from this requirement.

Section 6.11: Recordkeeping

- 6.11(2)(d) This amendment would require Asbestos Training Providers to maintain the sign in/out logs required by 455 C.M.R. §6.09(3)(f) as records at their principal places of business.
- 6.11(2)(e) This amendment would require Asbestos Training Providers to maintain course examinations completed by trainees as records at their principal places of business.
- 6.11(3)(a)2. This amendment would require Asbestos Contractors to maintain the following records at their principal places of business: Certificates of Insurance, or legible copies thereof, documenting the Workers' Compensation Insurance coverage carried by the Asbestos Contractor.
- 6.11(3)(a)4. This amendment would require Asbestos Contractors to maintain the following records at their principal places of business: copies of all asbestos training certificates required by 455 C.M.R. §6.10 and all Asbestos Worker and Supervisor/Foreperson licenses issued by the Division pursuant to 455 C.M.R. §6.00 for every Asbestos Worker and Supervisor utilized by the Asbestos Contractor to perform Asbestos Abatement or Asbestos-Associated Work.
- 6.11(3)(a)12. This amendment would require Asbestos Contractors to maintain the following records at their principal places of business: the name, mailing address, street address and telephone number of every Contract Staffing Agency, employment agency or other entity from whom temporary or leased Asbestos Workers are, or were, obtained.

Summary, Draft Amendments to 453 C.M.R. §6.00

- 6.11(3)(a)13. This amendment would require Asbestos Contractors to maintain the following records at their principal places of business: legible copies of Certificates of Insurance documenting the Workers Compensation Insurance coverage carried by every Contract Staffing Agency, employment agency or other entity that is supplying, or has supplied, Temporary or Leased Asbestos Workers to the Asbestos Contractor.
- 6.11(3)(a)14. This amendment would require Asbestos Contractors to maintain the following records at their principal places of business: the name, address, telephone number, certification number and dates of employment of every Temporary or Leased Asbestos Worker utilized to perform Asbestos Abatement or Asbestos-Associated Work.
- 6.11(3)(b)4. This amendment would require Asbestos Contractors to maintain the following records at the worksite: legible copies of the Massachusetts licenses of each Asbestos Worker and each Asbestos Supervisor utilized by the Asbestos Contractor at the worksite.
- 6.11(3)(b)5. This amendment would require Asbestos Contractors to maintain the following records at the worksite: the name, address, telephone number, license number and dates of employment of every Temporary or Leased Asbestos Worker utilized by the Asbestos Contractor to perform Asbestos Abatement or Asbestos-Associated Work at the site since the commencement of the project.
- 6.11(3)(b)6. This amendment would require Asbestos Contractors to maintain the following records at the worksite: the name, mailing address, street address and telephone number of every Temporary Service Firm, employment agency or other entity from whom temporary or leased Asbestos Workers utilized by the contractor to perform work at the site are, or were, obtained.
- 6.11(3)(b)7.. This amendment would require Asbestos Contractors to maintain the following records at the worksite: legible copies of the current certificate of asbestos training of each Asbestos Worker and each Asbestos Supervisor utilized by the Asbestos Contractor at the worksite.
- 6.11(4)(c) This amendment would require Asbestos Analytical Services to maintain the following records at their principal places of business: the names, addresses, telephone numbers and training documentation of each person who performed asbestos analysis for the licensed Asbestos Analytical Service, with the dates of employment or utilization.
- 6.11(5) This amendment would require Asbestos Consultants to maintain the following as records at their principal places of business: copies of all documentation

pertaining to inspections, assessments, management plans, project designs sampling, project monitoring, or other asbestos consultation performed by the Asbestos Consultant within the scope of each consultant discipline set forth at 455 C.M.R. §6.07(1)(a).

Section 6.12: Notification of Asbestos Projects

Amendments to this section would recognize that fulfillment of the asbestos project notification requirements of the Massachusetts Department of Environmental Protection satisfies the notification requirements of 455 C.M.R. §6.12.

Section 6.13: Work Practices and Other Requirements for Asbestos Operations and Maintenance Projects

Major revisions to Section 6.13 are proposed. Section 6.13 sets forth alternate provisions for small-scale asbestos projects and projects involving non-friable asbestos-containing materials to be carried out as Operations and Maintenance Projects, according to certain specified work practices and related requirements. Where these requirements are met, this work could be carried out by persons other than licensed Asbestos Contractors. As proposed, the attendant training and work practice requirements for Operations and Maintenance Work would be similar to the corresponding OSHA requirements for Class II and Class III Work. Persons carrying out Asbestos Operations and Maintenance Projects in their own single-family, owner-occupied homes would be exempted from the training requirements set forth in the regulation.

- 6.13(2)(c) This subsection informs persons or entities who carry out Asbestos Operations and Maintenance Projects that they may be subject to the applicable notification requirements of 455 C.M.R. §§6.03(9) and 6.12 for larger-scale projects.
- 6.13(3) This subsection sets forth general work practice requirements for Asbestos Operations and Maintenance Projects.
- 6.13(3)(j) This subsection sets work area clearance requirements for asbestos work carried out as Operations and Maintenance Work.
- 6.13(3)(k) This subsection sets forth requirements for the disposal of debris generated during projects carried out as Operations and Maintenance Work.
- 6.13(4) This subsection sets forth requirements for the removal of asbestos floor tile, sheet asbestos coverings and associated asbestos-containing mastics as Operations and Maintenance Work. The requirements of this subsection largely parallel corresponding requirements in the OSHA Construction Standard for Asbestos, 29 C.F.R. Part 1926.1101. Among the prominent requirements proposed in this subsection is a requirement at 455 C.M.R. §6.13(4)(a)1 that floor tile, sheet

Summary, Draft Amendments to 453 C.M.R. §6.00

coverings and associated mastics be assumed to be asbestos-containing, unless bulk analysis or manufacturer's specifications indicate otherwise.

6.13(5) This subsection sets forth requirements for the removal of asbestos roofing and siding materials as Operations and Maintenance Work. The requirements of this subsection, for the most part, correspond to the requirements in the OSHA Construction Standard for Asbestos, 29 C.F.R. Part 1926.1101 for Class II and Class III work.

6.13(6) This subsection sets forth requirements for the removal and/or repair of asbestos-containing gypsum board/joint compound systems as Operations and Maintenance Work.

Section 6.14: Work Practices and Other Requirements for Asbestos Response Actions

6.14(3) The proposed deletion in the corresponding subsection of 453 C.M.R. §6.14(3) of the words, "*Responsible Persons or employees of said Asbestos Contractor or entity and that said persons are*" would allow Asbestos Contractors to use Temporary and Leased Asbestos Workers without the Contract Staffing Agency or other entity from whom the Workers are obtained being licensed as an Asbestos Contractor.

6.14(4)(e) Expanded requirements for Asbestos Projects utilizing glove bags are proposed in this subsection. Prominent among these are requirements that glove bags only be used on those structures or surfaces for which they are specifically designed, that they be constructed of 6 mil-thick (minimum) plastic sheeting and be seamless at the bottom, that they be used only once and not be moved along the surface to which they are applied, and that at least two persons perform glove bag removal of friable ACM.. Also prominent is the proposed requirement that the Work Area be isolated in accordance with 455 C.M.R. §6.14(4)(a)7 and cleaned of visible debris by wet wiping and/or HEPA vacuuming prior to installation of the glove bag. These proposed amendments are consistent with OSHA requirements related to glove bag use.

6.14(5)(b) An elimination of the requirement for clearance air monitoring for facilities that are to be completely demolished is proposed in this subsection.

6.14(5)(b)2.c It is proposed that a minimum of 1080 liters of air be collected for clearance samples where the NIOSH 7400 Method is used for analysis. This sample volume is the minimum recommended by the principal author of the 7400 Method and is referenced in the NIOSH analytical manual.

Section 6.16: Cease and Desist and Other Administrative Orders

- 6.16(6) This subsection sets forth proposed procedural requirements for the recission of Cease and Desist Orders.
- 6.16(7) This proposed amendment makes explicit the Commissioner's authority to issue and rescind orders for the correction of unsafe conditions at asbestos work sites.